



Ponce - Nicasio Broadcasting, Inc.

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Carmen Briggs
President

March 23, 1993

93-8

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Donna R. Searcy
Secretary,
Federal Communications Commission
1919 M Street N.W.
Washington, D.C. 20554

Dear Ms. Searcy:

Enclosed is a self addressed envelope and a copy of the letter
Re: MM Docket #93-8 to be stamped.

Sincerely,

Carmen Ponce Nicasio Briggs
Carmen Ponce Nicasio Briggs

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FEDERAL COMMUNICATIONS COMMISSION
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FCC MAIL ROOM

Mr. James Quello, Chairman
Federal Communications Commission
1919 M Street N.W.
Washington, D.C. 20554

Dear Mr. Chairman:

This package represents my public comments (MM Docket #93-8) to request a Must Carry public interest finding by the FCC.

"In the beginning there was broadcasting...then...narrowcasting...now...microcasting...it's TV's next age..." (Television NEXT YEAR, 500 CHANNELS" (Newsweek 3/1/93).

TCI's John Malone said, "Television will never be the same." (Ibid.)

"Currently in the works are 24-hour channels devoted exclusively to soap operas, game shows, sitcoms, crime programs, Westerns, war movies, love stories, how-to-lessons, senior citizen affairs, golf, automobiles, even infomercials." (Ibid.)

To survive and compete, free-over-the-air already microcasting Home Shopping stations must be granted Must Carry as a rightful recipient-participant in the "Next Age 500+ Cabled TV World."

The most prominent George Gerbner, Dean Emeritus of the University of Pennsylvania's Annenberg School of Communications said, "The TV audience has never clamored for diversity...their attitude is...if you are nuts about Westerns... that's all you'll tune to". (Ibid.)

Accordingly, micro-casting KCMY has been in "TV's next age micro-casting niche" meeting the public interest by broadcasting a format which our viewers do tune to, ie: 24 hour Home Shopping.

Mr. Chairman, I respectfully request the Commission grant Must Carry to KCMY as it is meeting its public interest requirement not only through on-and-off-air programming activities but also through delivering a program service which our viewers want, demand, and tune to: 24 hour home shopping.

Sincerely,

Carmen Ponce Nicasio Briggs
CARMEN PONCE NICASIO BRIGGS

**KCHY TV-CHANNEL 29
SACRAMENTO-STOCKTON-MODESTO**

**KCHY'S COMMENTS TO THE FEDERAL COMMUNICATIONS COMMISSION
PURSUANT TO MM DOCKET NO. 93-8**

March 1993

**KCMY-TV CHANNEL 29
Sacramento-Stockton-Modesto**

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INTRODUCTION

KCMY is the only female Hispanic 100% owned, and operated, full power commercial station, out of seven licensed FCC stations owned by Hispanics.1/

KCMY CEO-General Manager Carmen Ponce Nicasio Briggs is the controlling female Hispanic majority owner.

KCMY is a Home Shopping Network affiliate and is not carried by any cable system in the entire ADI.

KCMY has been broadcasting 2.5 years, 24 hours a day, free-over-the-air to urban/rural Sacramento/Stockton-Modesto the Home Shopping Club programming format.

KCMY's 19th ADI population is 2,812,200 with 1,045,700 households, with 9 commercial and 1 educational TV stations.2/ Ethnicity is 78% White; 12% Hispanic; Black 3%; Asian-Pacific 5%; American Indian 1%; Other 1%.3/

KCMY programming consists of a variety of inter-active Home Shopping services and products offered to all ages. Various female and male show hosts describe the services or products and take toll free calls from viewers.

KCMV

viewers enjoy the non-passive inter-activity of KCMV

OPERATIONAL HISTORY

In May of 1984, KCMY was granted a comparative hearing UHF Channel 29 Construction Permit conditioned on locating the transmitter a minimum 20 miles distant from "antenna farm" station Channel 31, resulting in a mandated FCC negative signal reception impediment.

The FCC grant was made to me, a female Hispanic as controlling managing partner (70%), and two other Hispanic females (15% each) as the sole owners of Ponce-Nicasio Broadcasting (KCMY).

From 1984 to 1988, I was unable to overcome: The general ignorance of non-broadcast lending institutions; no network affiliation; no broadcast track record; indifference, ignorance, and lack of appreciation of the public policy of granting FCC licenses to women and minorities; being the last station with the inability to obtain good programming; not being allowed to construct at the antenna farm; no "must carry" law to assure lenders of cable-carriage; and finding a post-grant new transmitter site.

On January 8, 1988, I met with HSN representatives ultimately resulting in a signed August 1988 HSN Affiliation Agreement which provided KCMY with a revenue stream to form the basis for financing to construct the station, provide monthly operating revenue, and pay down our debt exceeding \$1,000,000 at that time.

In March of 1989, the two non-majority owners filed for mandatory arbitration basically requesting an Order to: 1) Nullify the HSN Agreement and 2) Instead, sell the Construction Permit to an all white, male Hollywood based failing company which had lined up major lenders to finance construction based on KCMY's CP.

In late August of 1989, the three all white male arbitrator panel granted the above Order to sell the CP.

In September of 1989, to protect the CP against sale, I placed KCMY into bankruptcy. The arbitration award and the bankruptcy debt prevented pending construction & brought debt to \$1,250,000+.

In December of 1989, upon the local Superior Court confirming an obvious racially gender biased Arbitration Award, I stayed the forced sale of the Construction Permit through an appeal. A court order declared my controlling right to construct the station during the 2.5 months appeal period of the confirmed, but unfinal, order.

In February of 1990, taking the greatest personal financial risk of my life, I took the HSN Affiliation and began construction.

On August 27, 1990, I turned on my transmitter displaying those beautiful color bars, KCMY's logo, and began broadcasting the Home Shopping Club format 24 hours a day.

In February 1991, the 3rd Appellate District in Sacramento reversed, remanded, and vacated the Arbitration Award.

I had succeeded in retaining my controlling Hispanic ownership to become one of a mere seven Hispanic owned TV stations. This is .6% of the total 1,142 TV stations licensed. (See EXHIBIT A)

The Home Shopping Network made this success story happen. They did not abandon me. This was unlike the many banks, venture capitalist vulture firms, thrifts, Telemundo, and other media entities who offered no financial help. Usually, but not always, majority control was demanded. HSN received no equity or control.

After going on the air in August of 1990, I turned to full time management of the station and began ascertaining and fulfilling public service commitments; striving to secure cable carriage and placement of KCMY program listings in the newspapers, and gaining community viewership of Channel 29.

I believe we have succeeded in meeting the public interest and providing minorities, and women, job and training opportunities not otherwise available.

Must Carry status will allow KCMY to continue these opportunities.

ASCERTAINMENT, PROGRAMMING, AND PUBLIC INTEREST

SIGNIFICANT TREATMENT OF COMMUNITY ISSUES

KCMY has always strived to more than meet all FCC rules and regulations. We have worked hard to ascertain the proper FCC standards so as to more than meet our public interest requirements to the children and the community.

We employ a local, experienced female TV personality familiar to the community to host and produce in-house weekly, commercial-free one-half hour programs focusing on the needs of women, children, and the general community interest. (See EXHIBIT B)

Local community leaders are interviewed on "Street Talk" to form the basis of our locally produced community affairs program aired weekly on Sundays mornings and prime time. (See EXHIBIT C)

CHILDREN'S PROGRAMMING

KCMY strives to provide programming to specifically serve children's educational and informational needs as directed by The Children's Television Act of 1990 to further the positive development of the child, including the child's cognitive, intellectual, and/or emotional and social needs.

KCMY airs at least 2.5 hours of full length commercial free one-half hour programs each week. One of which is locally produced by KCMY. There are no products, services, paid club memberships, or commercials during these programs.

KCMY launched, free of charge a 30 minute weekly children's program called, "What If?", a locally produced program acted by children 16 years and under. Camera use, editing equipment, technical advice, and facilities included. (See EXHIBIT D)

"What If?" came to KCMY because no other station or cable system would help them. This deserving group of aspiring young people needed a broadcast outlet for their efforts so the children of the community could view their efforts. KCMY was the answer.

I take great care to see KCMY addresses children's issues by locally producing at least one children's half-hour program each week and by selecting PSA's directed to children's issues and needs. (See EXHIBIT E)

In line with our Community Participation policy, KCMY as an off-air activity was a "Gold" sponsor of a Chicano Youth Leadership Program, as well making other contributions of both time and money to other youth groups. (See EXHIBIT F)

PUBLIC SERVICE ANNOUNCEMENTS

KCMY's PSA's are shown an average of 400 times a week or 60 times a day. This substantial public interest service far exceeds other stations, we believe, in this market. (See EXHIBIT G)

It is KCMY policy to air Public Service Announcements on an average of four minutes each broadcast hour. These are carefully selected to address children's, women's, and general community interest.

OTHER PROGRAMMING

In addition, KCMY airs a variety of other non-entertainment programming. "Coast to Coast" featuring former United States Senator John Seymour was aired wherein he interviewed national leaders about drugs, environmental concerns, etc.

On Christmas Eve and Christmas day, KCMY aired 33 hours of continuous religious programming. (See EXHIBIT H)

KCMY is constantly striving to be of assistance to all who wish to reach their constituency by initiating a significant contribution to our public interest responsibilities by searching for full-length public interest programs and airing them free of charge.

COMMUNITY ACTIVITIES OFF-AIR

Management and key personnel have long participated in community affairs through active membership in various organizations, including the Hispanic Chamber of Commerce and the Sacramento Chamber of Commerce. Various groups have been sponsored and/or supported by KCMY. Also monetary donations have been made with resultant recognition to KCMY. (See EXHIBIT E)

EMPLOYMENT

KCMY is proud of its good EEO record by having not only the key position of CEO-General Manager held by its Hispanic female majority owner, but also a majority of top management positions are also held by Hispanic females, and males. Non-minority women also hold key positions.

EMERGENCY BROADCAST SYSTEM

KCMY'S location (40+ miles "off the antenna farm") positions KCMY to have the only tower left standing after a major earthquake which could destroy the entire antenna farm in 20 seconds or less.

EBS could be totally dependent on KCMY in an emergency.

Using the recent World Trade Center disaster as an example, this is a real life example of KCMY's qualification of meeting the public interest of which no other station can match. (See EXHIBIT I)

CABLE CARRIAGE

KCMY is not on any cable system in the ADI. (See EXHIBIT I)

The Sacramento-Stockton-Modesto ADI is actively converting its rural population to new cable-only subdivisions and apartment complexes with no outside antennas allowed. (See EXHIBIT J)

As a direct result, this steady deterioration of our free-over-the-air-viewer universe dictates a must carry status to survive. KCMY needs cable to effectively compete with its media competitors, local TV, and next year's new 500 channel cable world which Sacramento Cable (208,000 subs) has initiated compression.

Further, it means validating and giving meaning and purpose to FCC policy of placing, and retaining, minorities in the broadcasting business. Cable carriage means survivability.

The position of the local Manager of Sacramento Cable (Scripps-Howard with 208,000 subs) in denying carriage is, "It is not your Home Shopping format that is keeping you off. Even if you changed programming, KCMY would not meet the type of programming we want to put on our available channels. We don't need more old movies, Gilligan's Island, Spanish programming, etc." (See EXHIBIT K)

It is unconstitutional to deny cabled TV house-holds KCMY's local programming as cable subscribers are rightfully entitled to community programming from all local stations, not a chosen few.

In a February 1993 local newspaper article, the only two unaffiliated Sacramento independent UHF stations were reported for sale as a unit with their combined survival strategy detailed in Broadcasting & Cable entitled "Independents Network for Survival" concerning station consolidation as an economic necessity.^{6/}

This is proof that KCMY's important HSN affiliation agreement, which was instrumental in putting KCMY on the air, should not now be used as a sword to deny KCMY cable carriage.

KCMY must carry status will keep KCMY on the air broadcasting free-over-the-air in a fast shrinking broadcast environment.

With 500, if not 5000, cable channels on the horizon, the stampede to cable should accelerate. The irony of it is that viewers will receive the same "micro-casting" type of format that KCMY has been providing for 2.5 years.

"Micro-casting next age," is hailed "media-correct" by and for cable who, at the same time, want the FCC to deny the same type of programming to Home Shopping telecasters as being "too micro".

PROGRAM CONTENT BASED CONDITION ONLY FOR HOME SHOPPING STATIONS

KCMY viewers demand, deserve, and are entitled to 24 hours of shop-at-home programming just like cabled households.

Public interest should not be "definition limited" to mean just on-and-off air public service. In reading letters from our home shopping viewers, it becomes clear JUST RECEIVING OUR FREE-OVER-THE-AIR 24 HOUR HOME SHOPPING PROGRAMMING is, in their minds, a public interest in itself. (See EXHIBIT L)

It is in the prime public interest that invalids, auto-less, hospitalized, senior, shut-ins, convenience minded, etc., viewers receive our programming. Some of our viewers are also concerned when they see TV news clips featuring horse mounted police and roof top mall riflemen. (See EXHIBIT M)

It would be unconscionable to deny must carriage to a station that is meeting such a pure, unadulterated public interest service by meeting the needs of these vulnerable segments of society.

An FCC finding that KCMY programming is in the public interest and eligible for cable carriage will uphold the First Amendment and Equal Protection Clause of the Constitution as well.

Further, the finding would prevent violence to the FCC's well-founded public policy of assisting minority owned firms to freely choose its programming while entering, and remaining, in the broadcasting business in order to get and give on-the-job training to minorities and women, as well as be a diverse and valuable part of the American communications field.

Plus, must carry will allow KCMY to remain one of the only seven Hispanic owned stations representing .6% of the total of 1,142 TV stations. (See EXHIBIT A)

INITIATING PROGRAMMING CHANGES TO QUALIFY FOR MUST CARRY

Commissioner Ervin S. Duggan defined the problem well, "I will be fascinated to see how we will come out on this question."7/

KCMY's answer to "this question" is, "KCMY is a network affiliate with "niche" programming and cannot possibly be expected to diversify its "niche" to gain Must Carry and survive."

For proof, KMCY offers this ADI's timely tale of the only two non-affiliated local indies employing a diverse "non-niche" program format consisting of Koplar's KRBK Channel 31 and GE's KSCH-TV Channel 58, which are listed as two victims of the "Decline of the Independent Indies worn down by tough times...Network for survival."/8

Their plight is the 1993 economic reality check of..."The NAB...reported...average UHF station loss at \$425,392 for 1991"./9

Contrasted to this new definition of "networking for survival", KCMY employs the traditional method of "networking" with HSN for a set hourly affiliation rate depending on the number of hours aired.

The price of gaining Must Carry at the expense of less hours of HSN programming means an immediate revenue loss to KCMY.

To require KCMY to program less HSN hours for Must Carry simply cannot be not be done in light of the economic necessity of microcasting for "TV's next age" in order to compete and survive.

KCMY has worked for 2.5 years to establish niche programming to successfully pay its monthly costs, reduce its debt, and build its loyal and demanding viewership.

Unlike Channels 31 & 58, KCMY does not need to go "Back to the Future." We have been there for 2.5 years. We merely wish to remain.

Therefore, we strongly urge the FCC to grant Must Carry, and not mandate a KCMY programming change which would cause an immediate breach of our Affiliation Contract as a result of broadcasting less than contracted for hours.

CONCLUSION

An important public figure once said, "There is no security in this world, just opportunity." And that is precisely what KCMY wants....opportunity...opportunity to rid ourselves of that greedy, uncompromising cable operator gate-keeper denying KCMY access to over half, and growing, of our rightful audience now denied us.

Cable carriage will help overcome the newspapers and TV Guide ("second leg media segment") which might then relent and publish our program schedules. (There seems to be a bias either against minorities/women in broadcasting or Home Shopping stations, or both). (See EXHIBIT K)

Thus, while cable carriage itself does not stand alone as a survival tool for a station, it will help in overcoming the denial of the vital "second leg media segment" which is also vital to KCMY's credibility to attract local and national advertisers so we, too, can be rated, survive, and grow. (See EXHIBIT N)

To weaken KCMY by skewing our programming as the price of gaining Must Carry is tantamount to a death sentence as network HSN "niche" programming is our key to survival with KCMY's linchpin "niche" HSN shop-at-home services strongly targeted towards a women's audience who strongly want and support it.

This programming provides a predictable monthly income to KCMY to meet weekly payrolls, monthly operating costs, and substantial debt reduction incurred getting, and staying, on the air.

Let's face it. KCMY is only 31 months old and deep in debt with no deep pockets and (like most small stations) is struggling day-to-day with typical broadcast cost operating problems.

The "old way" to deal with operating costs was to get more advertising dollars. The new way is to either "network" to consolidate or affiliate. (Like the "publish or perish" theory).

Early on, under the "old way" to add revenue, KCMY hired an experienced media advertising salesman. He failed miserably because ad agencies took the position of "No cable carriage = No TV presence = No ratings = No newspaper listings or TV Guide = No advertising \$\$\$\$\$\$\$ for KCMY."

The new way? "Combined with the transformation of independents to Fox affiliates, the consolidation trend is making the truly independent independent a rare, if not endangered, species."10/

KCMY's way? KCMY has a valued Affiliation Agreement in place and does not need or want consolidation.

We respectfully request the Commission make a finding that
4770 Shopping stations are entitled by right to be granted cable

FOOTNOTES

- 1/ COMPILATION BY STATE OF MINORITY-OWNED COMMERCIAL BROADCAST STATIONS. UNITED STATES DEPARTMENT OF COMMERCE NOVEMBER 1992
- 2/ BROADCASTING & CABLE MARKET PLACE 1992
- 3/ THE SACRAMENTO BUSINESS JOURNAL 1992
- 4/ BROADCAST MAGAZINE, February 15, 1993 Page 11
- 5/ COMPILATION BY STATE OF MINORITY-OWNED COMMERCIAL BROADCAST STATIONS. UNITED STATES DEPARTMENT OF COMMERCE 1992
- 6/ BROADCAST & CABLE MAGAZINE, February 15, 1993 Page 11
- 7/ FCC SHOPS FOR ANSWERS MULTICHANNEL NEWS, January 18, 1993 Page 39
- 8/ BROADCAST & CABLE, March 1, 1993 Pages 4,11,39
- 9/ HDTV REPORT, January 20, 1993
- 10/ BROADCAST & CABLE, March 1, 1993 Page 11

COMPILATION BY STATE OF MINORITY-OWNED COMMERCIAL STATIONS

EXHIBIT A

**COMPILATION BY STATE OF MINORITY-OWNED
COMMERCIAL BROADCAST STATIONS**

**The Minority Telecommunications Development Program
National Telecommunications & Information Administration
United States Department of Commerce**

November 1992

**COMPILATION BY STATE OF MINORITY-OWNED
COMMERCIAL BROADCAST STATIONS**

*The Minority Telecommunications Development Program
National Telecommunications & Information Administration
United States Department of Commerce
Joann C. Anderson, Ph.D., Director*

*Louis Camphor, III
Telecommunications Research Analyst*

*This is a compilation of information from numerous sources. MTDP makes no
claims as to the completeness of the information contained herein.*